

ENTERED

July 08, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THALIA HUYNH, *et al*,

Plaintiffs,

VS.

WAL-MART STORES TEXAS, LLC,

Defendant.

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CIVIL ACTION NO. 4:18-CV-4257

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court in the above referenced proceeding is Defendant's Partial 12(b)(6) Motion to Dismiss (Doc. No. 8); Plaintiffs' Response (Doc. No. 9); Defendant's Reply (Doc. No. 19); Judge Stacy's Memorandum and Recommendation (Doc. No. 15) that the Court grant in part Defendant's motion; and Plaintiffs' Objections (Doc. No. 16) to the Memorandum and Recommendation.

The Court has reviewed the case, *de novo*, and agrees with the Magistrate Judge's conclusion that Plaintiff has not stated a plausible claim against Defendant for malicious prosecution, intentional infliction of emotional distress, and violations of the Texas Deceptive Trade Practices Act, but should be allowed to replead their claim for negligence *per se*. Accordingly, the Court hereby

ORDERS that Plaintiffs' Objections (Doc. 16) are **OVERRULED**; the Memorandum and Recommendation (Doc. 33) is **ADOPTED**; and Defendant's Partial 12(b)(6) Motion to Dismiss (Doc. No. 8) **GRANTED IN PART**. It is further

ORDERED that Plaintiffs' claims of malicious prosecution, intentional infliction of emotional distress, and violations of the Texas Deceptive Trade Practices Act are **DISMISSED WITH PREJUDICE**. It is further

ORDERED that Plaintiffs have 20 days from entry of this Order to amend their complaint to re-plead their claims for negligence *per se*.

SIGNED at Houston, Texas, this 8th day of July, 2019.

A handwritten signature in black ink, appearing to read 'Andrew S. Hanen', written over a horizontal line.

ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE